

DOCKET FILE COPY ORIGINAL

ORIGINAL

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of  
Amendment of Section 73.202(b)  
Table of Allotments  
FM Broadcast Stations  
(Klamath Falls, Oregon)

)  
)  
)  
)  
)  
)

MM Docket No. 94-86  
RM - 8497

RECEIVED  
DEC 05 1994  
FCC MAIL ROOM

**COMMENTS TO COUNTERPROPOSAL OF WESTERN  
STATES BROADCASTING, INC.**

**DRB MEDFORD LICENSE, INC.**

J. Dominic Monahan  
Luvaas, Cobb, Richards & Fraser, P.C.  
777 High Street, Suite 300  
Eugene, Oregon 97401  
Telephone (503) 484-9292

No. of Copies rec'd  
List A B C D E

024

## **SUMMARY**

These comments are submitted by DRB Medford License, Inc. ("DRB Medford"), the assignee of Stations KBOY(FM), Medford, Oregon, and KROG(FM), Phoenix, Oregon in opposition to a counterproposal submitted by Western States Broadcasting, Inc. ("Western"). Western seeks to delete Channel 249C-1 in Altamont, Oregon in order to re-allocate it to Butte Falls, Oregon as Channel 249C-2. This counterproposal was in response to an initial rulemaking filed by Terry A. Cowan ("Cowan") seeking to add Channel 284C-1 to Klamath Falls, a community adjacent to Altamont. Part of Western's counterproposal is to allocate Channel 284C-1 to Altamont (instead of Klamath Falls) as a replacement for Channel 249C-1 which Western proposes to allocate to Butte Falls.

DRB Medford opposes the allocation of Channel 249C-2 to Butte Falls on grounds that it represents the removal of the only authorized service to Altamont, the largest community in Klamath County. DRB Medford also points out that Butte Falls is within the greater metro area of Medford which is served by an abundance of radio signals. In addition, the population disparity between Butte Falls (252 persons) and Altamont (18,591 persons) is clearly violative of the statutory mandate under §307(b) of the Communications Act of 1934, as amended, which provides that the Commission allocate frequencies on a fair, equitable and efficient basis.

Finally, DRB Medford submits evidence that Western, and its principal, William Zawila, have habitually failed to honor previous commitments to the Commission to file applications and pursue in good faith the construction of other broadcast facilities. In addition, Western's financial condition is such that it lacks the minimal financial ability to undertake such proposals.

For the above reasons, DRB Medford requests that Western's counterproposal to reallocate Channel 249C-1 from Altamont to Butte Falls as a C2 facility be denied.

## **TABLE OF CONTENTS**

	<b>Page</b>
<b>Standing . . . . .</b>	<b>2</b>
<b>Introduction . . . . .</b>	<b>3</b>
<b>The Western Proposal . . . . .</b>	<b>5</b>
<b>Western's Proposal is Contrary to §1.420 of the Commission's Rules . . . . .</b>	<b>7</b>
<b>Western's Expression of Interest to Pursue the Channel is Not Genuine . . . . .</b>	<b>10</b>
<b>Western Lacks the Basic Financial Ability to File and Pursue the Proposed Allocations</b>	<b>13</b>
<b>Conclusion . . . . .</b>	<b>14</b>

RECEIVED

DEC 5 1994

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

FCC MAIL ROOM

In the Matter of	)	
Amendment of Section 73.202(b)	)	MM Docket No. 94-86
Table of Allotments	)	RM - 8497
FM Broadcast Stations	)	
(Klamath Falls, Oregon)	)	
	)	

***COMMENTS TO COUNTERPROPOSAL OF WESTERN  
STATES BROADCASTING, INC.***

DRB Medford License, Inc. ("DRB Medford"), the assignee of Stations KBOY(FM), Medford, Oregon and KROG(FM), Phoenix, Oregon, through its counsel, respectfully submits its Comments to the counterproposal submitted by Western States Broadcasting, Inc. ("Western") which opposes the rulemaking of Terry A. Cowan ("Cowan") seeking to add Channel 284C-1 to Klamath Falls, Oregon as a fourth FM service. Instead, Western seeks to have this channel allocated to Altamont, Oregon, as a replacement channel for Channel 249C-1, authorized to Western for the operation of Station KCHQ(FM) in Altamont, and which Western now seeks to have removed from Altamont, Oregon, and re-allocated to Butte Falls, Oregon, as a down-graded C-2 frequency in that community. Western contends that Butte Falls is entitled to a preference on grounds Channel 249C-2 would be a first local service to Butte Falls and thus superior to Cowan's proposal to add a fourth local service to Klamath Falls.

Western requests that the Commission modify its outstanding construction permit for Station KCHQ(FM) on Channel 249C-1, to specify operation on Channel 249C-2 in Butte

Falls<sup>1</sup>. Insofar as its existing authorization for Channel 249C-1 in Altamont is concerned, Western would forfeit its operating rights on that channel in order to substitute Channel 284C-1 as a new allocation in its place.

DRB Medford submits that the counterproposal and rulemaking of Western is contrary to the Commission's rules and policies governing new FM channel allocations. Moreover, the evidence in this case clearly demonstrates that even if the Western proposal was consistent with the Commission's rules and policies, Western lacks the ability and has no genuine intent to file a construction permit and construct the proposal facility. In support the following is shown:

### ***STANDING***

Stations KBOY(FM) and KROG(FM) are Class C FM facilities which are located within and provide wide area service to Jackson County, including Butte Falls, Oregon. Butte Falls is approximately ten miles northeast of the greater Medford metro area<sup>2</sup> (see Attachment A). The transmitter site specified by Western is approximately 25 Km from Butte Falls<sup>3</sup>. Should Channel 249C-2 be allocated to Butte Falls and made operational it

---

<sup>1</sup> Section 1.420(i) provides that during the course of a rulemaking the Commission may modify the permit of an FM station to specify a new community of license where the amended allotment would be mutually exclusive with the permittee's present assignment.

<sup>2</sup> The map submitted by Western in its Counterproposal (Exhibit E-1) includes a boxed depiction of the greater Medford metro area. According to that map and accompanying scale, Butte Falls is located about ten miles northeast of that metro area.

<sup>3</sup> Western has specified the coordinates of the proposed site for the Butte Falls site as North Latitude 42° 22' 16" and West Longitude 122° 30' 08".

would obviously compete for listeners and revenues in the Medford market. Accordingly DRB Medford has standing to participate in this proceeding.

### **INTRODUCTION**

Western is the licensee of Station KWSA(AM), West Klamath Falls, Oregon and the permittee of Station KCHQ(FM) authorized to Altamont, Oregon. Both stations are located in the greater Klamath Falls radio market. Western initiated operation with Station KWSA(AM) in 1987, a daytime operation on 1070 kHz. The station terminated operation sometime in 1993.

Western is also the permittee of Station KCHQ(FM). A construction permit for this station was issued to Western's wholly-owned predecessor in March, 1988, for a Class C operation on Channel 267C. In January of 1990, Western acquired the permit in its own name per a *pro forma* assignment (see BAPH-891220EE). In the spring of 1991 Western began broadcasting with Station KCHQ(FM) and filed an application for license (see BLH-910510KC). Although the station was authorized to operate with an antenna height above average terrain of 882 feet as well as 100 Kw of power, the station had failed to construct or operate the facilities with operating values as specified in its permit. Shortly after Western commenced operation with Station KCHQ(FM), its illegal operation was discovered by the Commission. As a result, Western was assessed a forfeiture in the amount of \$1,000 for operating with unauthorized power and an unlicensed booster station (see FCC Notice of Apparent Violation dated August 13, 1991 [official notice requested] and attached FCC letter dated November 30, 1992). Since that time the station has operated

on an intermittent basis, never having operated with full facilities. Station KCHQ(FM) went dark in 1993 at about the same time as its sister facility, Station KWSA(AM).

In 1991 Western filed a rulemaking seeking to substitute Channel 243C-1 for Channel 267C in Altamont. According to Western this proposal would enable Station KCHQ(FM) to improve service to residents in Altamont by resolving unspecified signal problems. Western claimed that the terrain between its transmitter site and Altamont was hilly and thus KCHQ(FM) was unable to provide an adequate signal. Accordingly it sought a specified site to the west of Altamont<sup>4</sup>. The Commission granted Western's request to substitute channels but specified Channel 249C-1 instead of Channel 243C-3. The Commission directed Western to file a minor change application on behalf of Station KCHQ(FM) for a construction permit to operate on the new channel within 90 days of the effectiveness date of the order. The order was effective September 8, 1992, thus requiring Western to file on or before December 8, 1992. As of date Western has never complied with that requirement<sup>5</sup>.

---

<sup>4</sup> Ironically a counterproposal filed in MM Docket No. 91-341 proposed to substitute 284C-1 to Altamont in lieu of Channel 243C-1 — the substitute channel Western now seeks for Altamont. However, Western opposed the grant of this counter proposal on grounds that it would require an allocation east of Altamont to avoid short spacing with another station. That objection has apparently been removed.

<sup>5</sup> Western claims that it has been prevented in part from upgrading to Channel 249C-1 because Station KYRE(FM) in Yreka, California continues to operate on Channel 249C-2 (see Western's Response dated October 14, 1994). However, like Western, the licensee of KYRE(FM) has been under Commission order to switch channels to Channel 280C-1 since January 2, 1992 (see *Report and Order* in MM Docket 90-646, released October 2, 1999 [DA-91-1180]). However, there is absolutely no restriction in that *Order* impeding or conditioning Western's obligation to shift channels in Altamont.

## ***THE WESTERN PROPOSAL***

Western now seeks to abandon its existing authorization on Channel 249C-1 for Station KCHQ(FM) in order that it can foreclose the use of Channel 284C-1 as proposed by Cowan in Klamath Falls, while purportedly seeking to introduce first service on 284C-2 as a down-graded channel in Butte Falls.

Western claims its proposal to re-allocate Channel 249C-1 to Butte Falls as a C-2 frequency represents a first local service to that community and is otherwise consistent with the Commission's rules. This is decidedly not the case. The FCC made clear in the *Report and Order* issued in the proceeding amending the rules regarding modifications of FM authorizations to specify a new community of license that a new local service proposal is not by itself sufficient justification to remove an existing service, particularly one which is the only authorized service in that community. *Modification of FM and TV Authorizations to Specify a New Community of License ("Modification")*, 5 FCC Rcd 7094 (1990).

In fact the Commission adopted a policy which presumptively prohibited the removal of a community's sole local broadcast service on the grounds such removal would be contrary to the statutory mandate of §307(b) of the Communications Act of 1934, as amended. The Commission found that removing a community's only service was clearly against this mandate to provide a fair, equitable and efficient distribution of radio frequencies. The Commission said it was only in "rare circumstances" it might consider a waiver of this presumption, observing that the

" . . . public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating of a channel from one community to another, regardless of whether the service removed constitutes a transmission service, reception service or both. Removal of service is



warranted only if there are sufficient public interest factors to offset the expectation of continued service".

5 FCC Rec at 7098.

In the *Modification* the Commission clearly anticipated the kind of dubious proposal tendered by Western when it expressly clarified "that replacement of an operating station with a vacant allotment or unconstructed permit, although a factor to be considered in favor of a proposal, does not adequately cure the disruption to existing service occasioned by the removal of an operating station." The FCC went on to state that "from the public perspective potential for service at some unspecified future date is a poor substitute for the signal of an operating station that can be assessed today simply by turning on a television set or a radio set."<sup>6</sup>

Western's proposal is in open disregard of the public interest rights of Altamont to retain its existing authorization for local service<sup>7</sup>. Altamont is a community of some 18,591 persons (United States Census, 1990), the largest community in Klamath County and the largest community in the State of Oregon outside of a metro area with only one local radio service<sup>8</sup>. Moreover, it reeks of hypocrisy given the self-righteous pleas made by Western only two years ago when it petitioned the Commission to switch channels in Altamont so

---

<sup>6</sup> It is not beyond peradventure that Western may argue that Altamont has no local service because it has already denied the community that service when it ceased operation in 1993. DRB Medford trusts that the hypocrisy of such argument is self-evident and akin to the defendant who, having killed his parents, seeks the court's mercy on grounds he is an orphan.

<sup>7</sup> Western admittedly has had an opportunity to solve its "severe financial" problems and return KCHQ(FM) to the air by sale of the station to Cowan. (see Western's response of October 14, 1994). However, Western declined to do so.

<sup>8</sup> Altamont is the adjacent community to Klamath Falls, Oregon (pop. 17,737), the county seat of Klamath County (pop. 57,702).

it could relocate to Channel 247C-1 at a site on Chase Mountain and "provide improved service to Altamont". *Altamont, Oregon*, 7 FCC Rcd 4599 (1992). On this basis the Commission agreed with Western and changed the Altamont channel to 249C-1 at the site specifically requested by Western.

Western seeks to abandon service to Altamont and void its previous commitments to the Commission and the Altamont public on grounds Channel 249C-2 is now more valuable to Butte Falls, a population grouping (Western's language) of 252 persons than it is as an authorized channel in Altamont, a community of over 18,500 persons. Obviously Western's intentions of two years ago are no longer current. However, Western has presented no reason for its failure to proceed on those earlier representations. On these grounds alone the good faith and sincerity of the Western counterproposal is suspect.

**WESTERN'S PROPOSAL IS CONTRARY TO §1.420  
OF THE COMMISSION'S RULES**

Western has ignored the *Modification* order and made no attempt to justify the removal of Altamont's only existing service, even though the *Modification* clearly requires such a showing before removal will be considered. But even assuming *arguendo* that Western had submitted the requisite waiver showing, neither the facts nor legal precedent would support such removal.

Section 307(b) of the Communications Act mandates that the Commission "fairly, equitably and efficiently distribute frequencies among the several states and communities. Generally, if a community is incorporated or is listed in the United States Census, that is sufficient to demonstrate status as a community." Although broadly speaking a community consists of an identifiable population group being with common local interests, there is no

hard and fast rule to apply in deciding whether a particular population grouping constitutes a community and all relevant facts in each case must be weighed. *See Declaratory Ruling Concerning the Meaning and Effect of Section 73.642(a)(3)*, 55 FCC 2d 1987, 189 (1975). Here, while the community of Butte Falls is an incorporated community, its status as a community for allotment purposes is ambiguous as it clearly does not have the characteristics of a bona fide community. *Islesboro, Maine*, 8 FCC Rcd 4869 (1993)<sup>9</sup>. To begin with, Butte Falls is a small community clearly in decline. Based upon the official United States Census figures dating back to 1940, the high water mark for population in Butte Falls was 428 persons in 1980. By 1990 the population had dropped to 252 persons, a decline of more than over 40%<sup>10</sup>. In short, a serious question exists as to whether or not a genuine "community" exists as contemplated by the Commission's rules and the Communications Act.

Other than referencing its incorporation, Western makes no effort to demonstrate that Butte Falls has those characteristics which might otherwise qualify it as a community for allotment purposes. Although Western states that Butte Falls has an "identifiable population

---

<sup>9</sup> In *Islesboro*, a petitioner sought community status based on the claim the community had an independent form of government, a full-time population of 570, a post office, schools, two lodging establishments, 25 businesses, and a listing in the *Rand McNally Commercial Road Atlas*. However, the Commission considered this showing "ambiguous" and insufficient to establish bona fide community status. The petitioner was required to provide additional data.

<sup>10</sup> Available United States Census data for Butte Falls, Oregon dates back to 1940. Six decades of data show a long-term declining population:

<b>Year</b>	<b>Pop.</b>	<b>Year</b>	<b>Pop.</b>
1940	339	1970	358
1950	372	1980	428
1960	384	1990	252

grouping" it carefully avoids disclosing that this "grouping" totals only 252 persons. Instead, Western argues that its Butte Falls proposal would bring new service to some 175,000 persons. Given that this figure is more representative of the population of the Medford SMSA, it also is indicative of Western's real purpose in seeking the purported Butte Falls allocation — the addition of an eighth Class C facility into the Medford-Jackson County radio market.

Western claims its proposal would provide a first local service to Butte Falls. But this is a flawed assumption given the proximity of Butte Falls to the Medford market and the policies set forth in *RKO General (KFRC)*, 5 FCC Rcd 3222 (1990) and *Faye and Richard Tuck*, 3 FCC Rcd 5375 (1990). The precedent established in these cases addressed channel move-ins to suburban markets and the criteria to consider. Essentially the Commission stated that where the suburban station, *e.g.* Butte Falls, would provide service to the metropolitan area, *e.g.* Medford, and if the suburban community is relatively small, *e.g.* 252 persons, it is within the urbanized area, and exhibits a high degree of interdependence with the metropolis, the Commission is generally disinclined to grant a first local service preference to the suburban community proposal.

Butte Falls is located approximately 20 miles northeast of Medford-Ashland, which is the 208th largest radio market in the United States. The Medford SMSA encompasses all of Jackson County which had a population of 146,399 persons in 1990. Medford itself had a population in 1990 of almost 47,000 persons. The Medford-Ashland Oregon area is considered one of the fastest growing areas in the State of Oregon.

In contrast, Butte Falls is a small community of 252 persons, a population which is diminishing, that lies about ten miles northeast of the metropolitan boundary of the greater

Medford market (see Attachment A). DRB Medford submits that Western's proposal is nothing more than an attempt at the "artificial and unwarranted manipulation of the Commission's policies" to relocate the Altamont channel to the larger Medford-Ashland market, the very object which the Commission sought to prevent in its *Modification* order in MM Docket No. 88-526, 5 FCC Rcd at 7098.

On the other hand, Altamont Oregon, the largest community in Klamath County, had a 1990 population of 18,591 persons. Station KCHQ(FM) (Channel 249C-1) is the only service authorized to that community. Western's proposal would ignore the obvious disparity in the population groupings between Altamont and Butte Falls and submits absolutely no justification for its proposal to delete the only presently authorized service to Altamont. The magnitude of this disparity is made plain by the fact that the population of Altamont is 71 times larger than that of Butte Falls. Conversely, the population of Butte Falls is only 1.3% of the population of Altamont.

Moreover, there is no lack of radio service to Butte Falls, with no less than eight FM stations and nine AM stations providing service to the community<sup>11</sup>. Not included in these services are the station providing coverage to Butte Falls from the Klamath Falls market area.

***WESTERN'S EXPRESSION OF INTEREST  
TO PURSUE THE CHANNEL IS NOT GENUINE***

Western asserts that if Channel 249C-2 is allocated to Butte Falls, it will file a minor change application to modify its authorization for Station KCHQ(FM) so it can provide a

---

<sup>11</sup> See attached map submitted by DRB Medford with its application for the assignment of licenses for Stations KBOY and KROG (Attachment B).

first service to Butte Falls. In the magnanimity of the moment, Western also promises to file for the replacement channel (284C-1) in Altamont it seeks to have substituted for the existing service it simultaneously seeks to abandon. Like its previous representations and commitments to the Commission, Western's expressions of interest ring hollow.

It is axiomatic that any proposal for the allocation of a new channel requires a genuine expression of interest in filing an application for the proposed frequency, and if granted, pursuing the timely construction of such a facility. Western and its controlling principal, William Zawila, have had at least four opportunities before the Commission to demonstrate their sincerity and good faith in fulfilling such commitments. On all four occasions they have breached these commitments.

(a) **KCHO(FM), Altamont.** Western has spent nine years in the Commission's administrative processes allegedly pursuing a permit and license for a full Class C facility in Altamont. After being issued a construction permit in March, 1988 for a 100 Kw station using an antenna at a height above average terrain of 882 feet, Western spent more than three years building a sub-standard facility which it finally attempted to license in May, 1991 (See BLH-910510KC). But this effort was a sham as revealed shortly thereafter when the Commission discovered the KCHQ(FM) facility was operating with reduced power and with an unauthorized booster station — apparently put into use when Western elected not to build the full Class C facility as authorized (see Attachment C)<sup>12</sup>.

---

<sup>12</sup> After the FCC discovered Western's illegal operation of Station KCHQ(FM) at reduced power, it filed a request on August 13, 1992 for a Special Temporary Authority to operate at reduced power. That authority was granted for a period of four months and expired on December 13, 1992. After it expired, Western never renewed the STA, but continued to operate Station KCHQ(FM) at reduced power and

Thereafter, in 1991 Western filed a petition for rulemaking to switch channels in order to improve coverage from a site on Chase Mountain west of Altamont. The Commission granted this request on July 23, 1992 and directed Western to file a minor change upgrade application by December 8, 1992. It is now two year later and Western has yet to file that application or otherwise meet its original commitment to pursue the upgrade.

(b) Station KNGS(FM), Coalinga, California. Western's principal shareholder (51%), William Zawila<sup>13</sup>, through one of his several companies, also holds the permit for Station KNGS(FM). This permit was issued more than six years ago and has never been built (see BPH-850709MT, issued October 19, 1987).

(c) Station KXER(AM), Templeton, California. Mr. Zawila was the permittee of Station KXER(AM), a 1 Kw station authorized on 1060 kHz in Templeton, California (see BP-851126AF). However, after he failed to build the facility, the Commission cancelled the permit and call sign.

(d) Station KNKD(FM), Earlimart, California. Through use of educational foundations created and controlled by Mr. Zawila, he has applied for permits on various commercial FM frequencies. One of these applications was granted and a permit issued on August 4, 1992 for a new FM station in Earlimart, California

---

without any further authority until operation was suspended sometime in 1993.

<sup>13</sup> It is difficult to determine the scope and accuracy of the ownership of the various companies and business entities owned by Mr. Zawila. For instance the last annual ownership statement on file at the Commission for Western and Stations KWSA and KCHA(FM) is dated in 1990. The Commission's Ownership Records contain no subsequent reports by Western for calendar years 1991, 1992, 1993 or 1994, despite the requirement of Section 73.3615(a) that reports for Oregon stations be filed on or before October 1 of each year.

(BPH-880626MB). To date that facility has never been built and a further extension of time in which to construct is pending<sup>14</sup>.

Given the proven and habitual failure of Western and its principal to honor any of their previous commitments to the Commission to pursue and build new facilities, there is absolutely no assurance they will do so with regard to this present proposal for Butte Falls and the replacement frequency in Altamont. Without such assurances, Western's counterproposal should be rejected.

***WESTERN LACKS THE BASIC FINANCIAL ABILITY TO FILE  
AND PURSUE THE PROPOSED ALLOCATIONS***

Western's ability to honor any commitment to pursue a new broadcast service is further undercut by its own acknowledgment of "severe financial" problems. Already Western has conceded its "severe financial" problems, citing them as one of the reasons it has been unable to return Stations KWSA and KCHQ(FM) to operation. Nonetheless, Western has insisted it is attempting to reorganize financially so that the stations may be returned to the air. But again, Western dissembles the facts. Based on information and belief drawn from information provided to undersigned counsel by the local utility company serving Klamath Falls and tax officials for Klamath County, there is very little likelihood Western will overcome the financial problems facing it. Not only has electrical power been cut off to its studios (and equipment apparently repossessed), but personal property taxes (now in excess of \$12,000) on Western's equipment remain unpaid since July 1992.

---

<sup>14</sup> According to Commission records, Mr. Zawila's office also provides front addresses for the permittees holding permits for Station KZPD(FM), Ford City, California, and Station KZPO(FM), Lindsay, California. These permits were issued in 1990 and 1991, respectively, but have never been built.



Accordingly, short of sale, there is no reasonable likelihood Western can return the stations to operation. Faced with this problem, there is not even a marginal possibility that Western can meet any commitment to pursue the proposed allocations in Butte Falls and Altamont.

### **CONCLUSION**

In view of the above, DRB Medford respectfully submits that the counterproposal submitted by Western must be rejected on grounds that it will render a public disservice to the community of Altamont by removal of its only authorized service. Furthermore, it is totally contrary to the statutory mandate that frequencies be allocated consistent with the goals set forth in §307(b) of the Communications Act. Finally, the Commission's records conclusively demonstrate that the commitments of Western and its principal, William Zawila, are entitled to absolutely no credibility. Mr. Zawila and his entities have consistently abused the Commission's rulemaking processes in pursuit of frequency allocations for which he has neither the ability nor interest in construction. Accordingly, Western's counterproposal submitted in this proceeding should be summarily rejected.

Respectfully submitted,

LUVAAS, COBB, RICHARDS & FRASER, P.C.  
Attorneys for DRB Medford License, Inc.

By J. Dominic Monahan  
J. DOMINIC MONAHAN

DATED: December 3, 1992

## **CERTIFICATE OF SERVICE**

I, Nancy Lee Kemper, a secretary in the law offices of Luvaas, Cobb, Richards & Fraser, P.C., certify that I have on this 3rd day of December, 1994, sent by United States Mail, postage prepaid, on behalf of DRB Medford License, Inc., copies of the foregoing "Comments to Counterproposal of Western States Broadcasting, Inc." to:

William L. Zawila, Esquire  
12550 Brookhurst Street, Suite A  
Garden Grove, CA 92640  
Attorney for Western States  
Broadcasting, Inc.

Leonard S. Joyce, Esquire  
5355 Wisconsin Avenue, N.W., Suite 300  
Washington, D.C. 20015  
Attorney for Terry A. Cowan

John A. Karousos, Acting Chief  
Allocations Branch  
Federal Communications Commission  
2025 M Street N.W., Room 8322  
Washington, D.C. 20554

Mr. Leslie K. Shapiro  
Allocations Branch  
Federal Communications Commission  
2025 M Street N.W., Room 8322  
Washington, D.C. 20554

Mr. Larry Eads, Chief  
Mass Media Bureau  
Federal Communications Commission  
Audio Services Division  
1919 M Street, Room 302  
Washington, D.C. 20554

Mr. Norman Goldstein, Chief  
Enforcement Division  
Federal Communications Commission  
2025 M Street, Room 8210  
Washington, D.C. 20554

  
\_\_\_\_\_  
Nancy Lee Kemper

LOCATION KEY FOR FM STATIONS:  
LOWER CASE LETTERS=  
70 dBu CONTOURS

- |      |   |      |                           |
|------|---|------|---------------------------|
| 1    | = | KTMT | Medford, OR               |
| 2    | = | KCMX | Ashland, OR               |
| 3, p | = | KBOY | Medford, OR               |
| 4    | = | KYJC | Grants Pass, OR           |
| 5    | = | KLDR | Harbeck-<br>Fruitdale, OR |
| 6    | = | KRWQ | Gold Hill, OR             |
| 7    | = | KOPE | Medford, OR               |
| 8, r | = | KROG | Phoenix, OR               |

LOCATION KEY FOR AM STATIONS

- |   |   |      |                 |
|---|---|------|-----------------|
| A | = | KTMT | Phoenix, OR     |
| B | = | KCMX | Ashland, OR     |
| C | = | KYJC | Medford, OR     |
| D | = | KRVC | Medford, OR     |
| E | = | KAGI | Grants Pass, OR |
| F | = | KSJK | Talent, OR      |
| G | = | KAJO | Grants Pass, OR |
| H | = | KDOV | Phoenix, OR     |
| J | = | KMED | Medford, OR     |

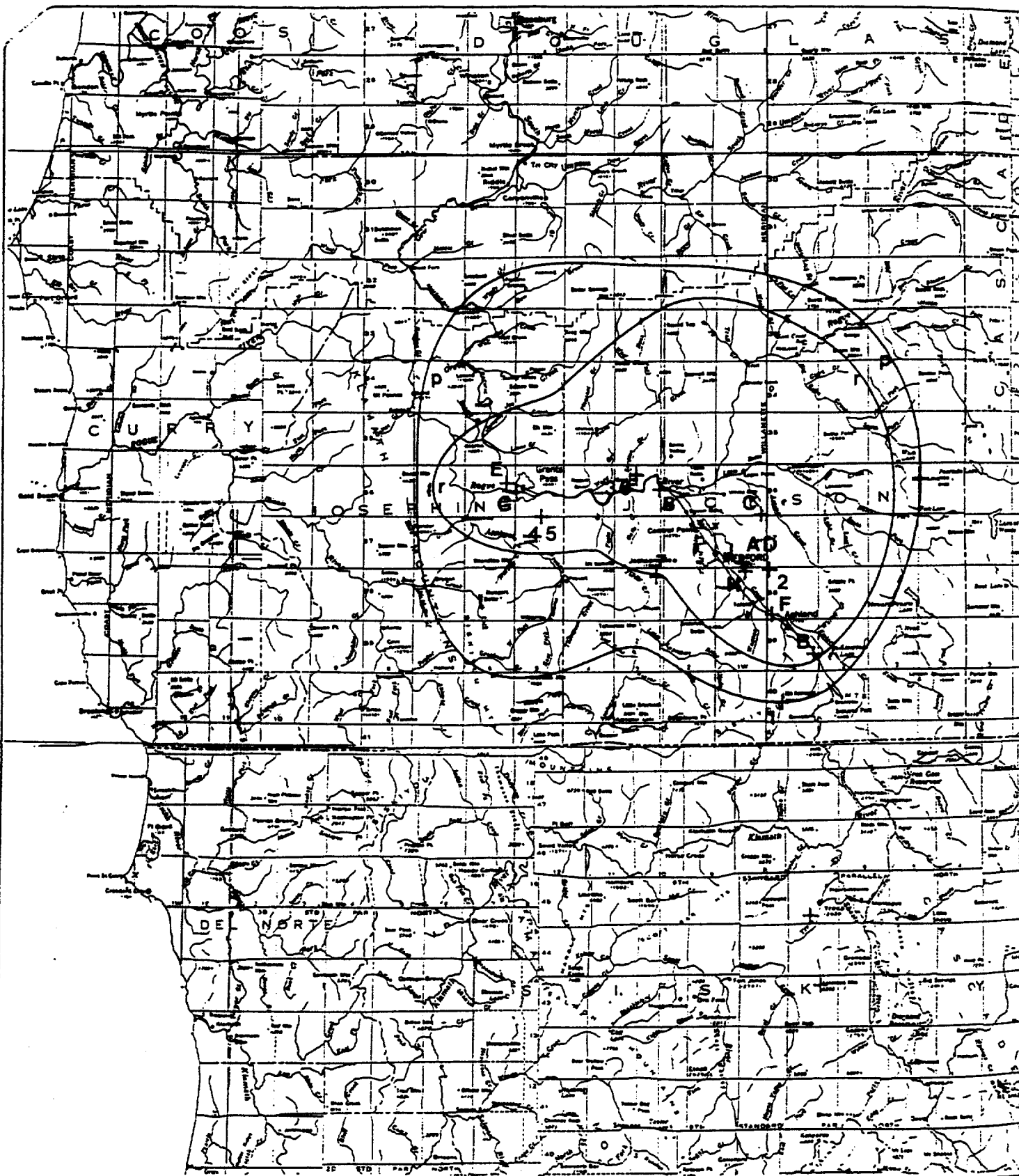
RELATIVE TO

SCALE 1:1,000,000

20 KILOMETERS 0 20 40 60 80 100 120

20 MILES 0 20 40 60 80

10/94



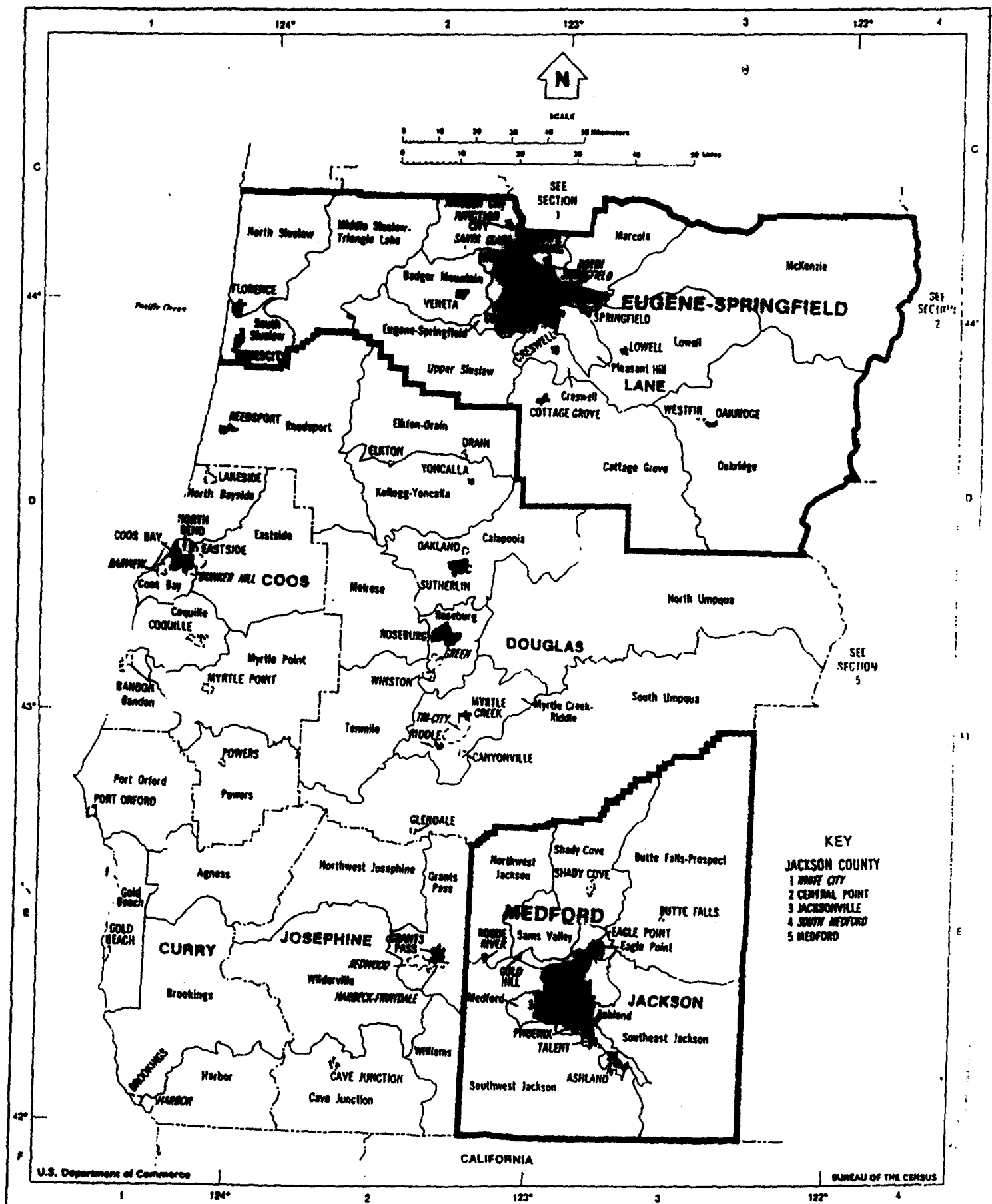
**HATFIELD & DAWSON**  
**CONSULTING ENGINEERS**

MULTIPLE OWNERSHIP STUDY SHOWING AM & FM STATIONS RE  
70 dBu CONTOURS OF KROG(FM) & KBOY(FM)

PREPARED FOR DESCHUTES RIVER BROADCASTING, INC.

# Index to Block Numbered Areas—Section 6

EXHIBIT E - 1



**FILE**

NAL file copy to STA. file

BU-FK / F BU

## Federal Communications Commission

DA 92-1673

FEDERAL COMMUNICATIONS COMMISSION  
MAR 09 1993  
PORTLAND, OREGONBefore the  
Federal Communications Commission  
Washington, D.C. 20554**LETTER**

November 30, 1992

Released: December 16, 1992

**CERTIFIED MAIL NO.****RETURN RECEIPT REQUESTED**Western States Broadcasting  
12550 Brookhurst Street, #A  
Garden Grove, California 92640.Attention: Mr. William L. Zawila  
PresidentRe: Notice of Forfeiture  
issued to Western  
States Broadcasting  
(Station KCHQ-FM)  
on August 27, 1991.  
3153502-91010  
PO-910091

Dear Western States Broadcasting:

This is in response to your letter dated June 13, 1992, to the Federal Communications Commission (FCC), Washington, D.C. Your letter requested "reconsideration . . . by the Commission" of a \$1,000 monetary forfeiture penalty that the FCC imposed on Western States Broadcasting (Western).

As explained below, we are affirming the \$1,000 penalty, but we are holding the requirement that it be paid in abeyance for three years. If during this period, the same violations are not repeated, there will be no obligation to pay the penalty.

On August 27, 1991, the FCC issued Western a Notice of Forfeiture for a \$1,000 monetary forfeiture penalty for violating its FCC station authorization and Section 73.1560(d) of the FCC's rules by operating its station KCHQ-FM at reduced power, and by operating a broadcast booster station without FCC authorization. 47 C.F.R. Section 73.1560(d). Western appealed this decision to the FCC on September 25, 1991. The FCC's Field Operations Bureau replied on May 13, 1992, that it was treating Western's appeal as a Petition for Reconsideration under Section 1.106 of the FCC's rules, and affirmed the \$1,000 penalty. 47 C.F.R. Section 1.106. Western's June 13, 1992, letter requests "reconsideration . . . by the Commission." It is not clear whether Western is now requesting the FCC's Field Operations Bureau to reconsider its reconsideration, or whether Western wishes to file an "Application for Review" to the FCC's five person Commission under Section 1.115 of the FCC's rules. 47 C.F.R. Section 1.115. We are treating Western's request as the former.

Western in its June 13, 1992, letter states several reasons why the monetary forfeiture penalty should not be imposed. Western's main argument is that payment of the \$1,000 monetary forfeiture penalty would cause it financial hardship, and it submitted tax returns and operating statements to document its claim.

Section 503(b)(2) of the Communications Act of 1934 directs the FCC to take into consideration ability to pay in assessing monetary forfeiture penalties. 47 U.S.C. Section 503(b)(2). Based on this consideration, the \$1,000 monetary forfeiture penalty is held in abeyance for three years from the date of this letter. If during that period, the same violations are not repeated, there will be no obligation to pay the monetary forfeiture penalty. However, if either of the violations should occur again during this period, Western will be obligated to pay the \$1,000 monetary forfeiture penalty imposed by this forfeiture proceeding, as well as any additional forfeitures for the new violation.

Western's other arguments are that the booster was subsequently approved by the FCC, the booster operated within the contour of KCHQ-FM's service area, the booster did not cause interference, KCHQ-FM was receiving complaints that the signal from its main transmitter site was deficient, that it "honestly believed in good faith that its action" was proper, and that it has no prior violations.

The operation of the main transmitter at reduced power, and the unlicensed booster station clearly violated the terms of Western's license and the FCC's rules. Although the booster was subsequently licensed by the FCC and did not cause interference, these factors do not cure the violation. Furthermore, a licensee's ignorance of the FCC's rules does not excuse a violation. *Triad Broadcasting Company, Inc.*, 96 FCC 2d 1235, 1242 (1984). Finally, the \$1,000 penalty imposed on Western was within the range of the usual penalty assessed by the FCC in early 1991 for a first violation of the rules involved.

By holding the forfeiture penalty in abeyance, the FCC seeks to achieve its enforcement goals while making allowance for Western's current financial condition. When a person accepts a broadcast license from the FCC, that person takes on the responsibility to comply with the FCC's rules. Please exercise care in the future to comply with these rules. The FCC takes very seriously its duty to enforce its rules.

Sincerely,

Richard M. Smith  
Chief, Field Operations Bureau